

Remarks

This Application has been carefully reviewed in light of the Office Action dated September 7, 2007. Applicant appreciates the Examiner's consideration of the Application. Claims 3-5, 8, 11, 15, 18-20, 23, and 26 have been amended to correct a typographical error present in each of those claims. Independent Claim 16 has been amended in relation to the Examiner's rejection under 35 U.S.C. § 101. None of these amendments is considered narrowing or necessary for patentability. Moreover, none of these amendments is made in relation to the Examiner's rejections under 35 U.S.C. § 102(e). Applicant respectfully requests reconsideration and allowance of all pending claims.

I. Claims 16-30 Recite Patentable Subject Matter

The Examiner rejects Claims 16-30 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Although Applicant does not necessarily agree with the Examiner's rejection, to advance prosecution, Applicant has amended Claim 16 to recite that the software is embodied in a computer-readable medium and when executed is operable to perform the limitations recited in the body of the claim.

The United States Court of Appeals for the Federal Circuit has recently stated that 35 U.S.C. § 101 "explains that an invention includes 'any new and useful process, machine, manufacture or composition of matter.' Without question, software code alone qualifies as an invention eligible for patenting under these categories, at least as processes." *Eolas Technologies, Inc. v. Microsoft Corp.*, 399 F.3d 1325, 1338-39 (Fed. Cir. 2005) (citations omitted) (emphasis added). Claim 16 is now directed to software embodied in computer-readable medium that when executed is operable to perform the limitations recited in the body of the claim. Applicant respectfully submit that Claim 16 and its dependent claims are statutory.

Moreover, the M.P.E.P. states that "functional descriptive material consists of data structures and computer programs which impart functionality when employed as a computer component." M.P.E.P. ch. 2106.01. "When functional descriptive material [*i.e.*, computer programs, according to above-cited portion of the M.P.E.P.] ***is recorded on some computer-readable medium***, it becomes structurally and functionally interrelated to the medium ***and***

will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. ” *Id.* (emphasis added). This portion of the M.P.E.P. makes clear that the M.P.E.P. contemplates and, in fact, authorizes claims directed to software embodied in a computer-readable medium and operable to perform certain functions. The manner in which Applicant has drafted these claims is clearly contemplated by the M.P.E.P. as being statutory.

For at least these reasons, Applicant respectfully submits that independent Claim 16 and its dependent claims (Claims 17-30) are directed to patentable subject matter and requests reconsideration and allowance of Claim 16 and its dependent claims.

II. Drawings

It is not entirely clear whether the Examiner objects to the drawings. The Office Action Summary Sheet indicates that the drawings filed on September 9, 2003, are accepted by the Examiner. However, the Detailed Action portion of the Office Action includes objections to the drawings. (Office Action at 3-4) In any event, Applicant assumes the Examiner intended to make objections to the drawings, as filed.

Applicant submits the attached replacement drawings, which include substantively the same content as the drawings filed with the patent application, but have been prepared by Applicant's draftsperson. Applicant attaches to this Response the Replacement Sheets for FIGURES 1-7; however, Applicant does not include Annotated Sheets since there are no amendments to the substance of the drawings. Applicant does note, however, that FIGURES 3A-3C were able to fit on a single drawing sheet, so they are now referred to simply as FIGURE 3. Applicant has made corresponding amendments to the Specification to reflect these changes. Applicant respectfully requests approval and entry of the replacement drawings.

III. The Claims are Allowable over *Ivanov*

The Examiner rejects Claims 1-45 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. US 2004/0215604 by *Ivanov* (“*Ivanov*”).¹ Applicant respectfully traverses these rejections and discusses independent Claim 1 as an example.

“A claim is anticipated only if *each and every element as set forth in the claim* is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added); M.P.E.P. ch. 2131. In addition, “[t]he elements *must be arranged as required by the claim*.” *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990) (emphasis added); M.P.E.P. ch. 2131. As illustrated below, it does not appear that *Ivanov* discloses, either expressly or inherently, each and every limitation recited in Claim 1.

At a minimum, the cited portions of *Ivanov* do not appear to disclose, teach, or suggest the following limitations recited in Claim 1:

- determining one or more environment characteristics;
- dynamically selecting at least a portion of a plurality of agent components based on the client request and the environment characteristics; and
- processing the client request using the selected agent components.

For example, the cited portions of *Ivanov* fail to disclose, teach, or suggest “determining one or more environment characteristics,” as recited in Claim 1. As allegedly disclosing these limitations, the Examiner cites two portions of *Ivanov* – Page 3, ¶ [0032] (“Passage A”) and Page 3, ¶¶ [0039]-[0040] (“Passage B”). (Office Action at 5)

Passage A states the following:

[0032] Referring to FIG. 3, a functional block diagram of a server 102 in accordance with an embodiment of the present invention is illustrated

¹ Applicant believes he could antedate *Ivanov* based at least on Applicant’s date of conception prior to April 24, 2003 (the filing date of *Ivanov*) and subsequent diligence up to the September 9, 2003 filing date of the Application. While Applicant has chosen not to do so in the present Response due to the clear distinctions between Applicant’s independent claims and *Ivanov*, Applicant reserves the right to antedate *Ivanov* at a later time, if appropriate. By not antedating *Ivanov* at this time, Applicant does not concede that *Ivanov* qualifies as prior art.

generally by numeral 300. The server 102 comprises an application 302, a runtime environment 304, and data sources 306 and 308. The application 302 comprises Java Server Pages (JSPs) 310, EJBs 312, query commands (QCs) 314, and data access objects (DAOs) 316. The runtime environment 304 comprises a Java.TM. 2 Platform Enterprise Edition (J2EE.TM.) framework 318 and a lightweight object query system (LOQS) 320. The LOQS 320 further comprises a query processor 322, at least one external query registry 324, and a data source adapter 326 for each data source 306, 308 desired.

(*Ivanov* at 3:[0032])

It appears to Applicant that Passage A merely discloses the components of server 102 according to the disclosure of *Ivanov*. Nowhere does it appear that the cited portion discloses making any determination of one or more environment characteristics, as recited in Claim 1.

Passage B states the following:

[0039] The data source adapter 326 is coupled with the LOQS query processor 322, providing connectivity between the data source(s) 306, 308 and the application 302. This architecture assures seamless connectivity to multiple data sources 306, 308, as required by a variety of customers. Generally, an application 302 needs just one standard data source adapter 326 that has the capability to couple the LOQS 320 and the desired data source 306, 308. LOQS 320 provides a default implementation that is automatically configured during WCS initialization and connects to the WCS data source 306.

[0040] Multiple data source adapters 326 can be provided to LOQS 320 in a more advanced application 302. This capability enables query commands 314 deployed on the application server 102 to access different underlying data sources 306, 308. Typically, connections details such a destination data source 306, 308, data table, and the like are provided by the query command 314 to the data source adapter 326 for each data source adapter 326 to establish the required connections.

(*Ivanov* at 3:[0039]-[0040])

It appears to Applicant that Passage B merely discloses, in part, that data source adapters 326 can be used to connect to different data sources 306, 308. However, it does not appear that Passage B explicitly discloses making any determination of one or more environment characteristics as specifically recited in Claim 1.

As another example, the cited portions of *Ivanov* fail to disclose, teach, or suggest “dynamically selecting at least a portion of a plurality of agent components based on the client request and the environment characteristics,” as recited in Claim 1.

First, at least because the cited portions of *Ivanov* fail to disclose, teach, or suggest “determining one or more environment characteristics,” as recited in Claim 1, *Ivanov* necessarily fails to disclose, teach, or suggest “dynamically selecting at least a portion of a plurality of agent components based on the client request and the environment characteristics,” as recited in Claim 1. For example, as discussed above, the cited portions of *Ivanov* do not appear to disclose, teach, or suggest that any determination about the environment, let alone a determination of environment characteristics plays any role in dynamically selecting one or more of a plurality of agent components.

Second, as allegedly disclosing “dynamically selecting at least a portion of a plurality of agent components based on the client request and the environment characteristics,” as recited in Claim 1, the Examiner cites Page 3, ¶ [0037] of *Ivanov* (“Passage C”). (Office Action at 5) The cited portion of *Ivanov* states the following:

[0037] At the heart of the J2EE framework 318 of the LOQS 320 is the query processor 322, which is a framework controller that coordinates the activity of LOQS 320 by distributing and delegating work to its components. The query processor 322 is a session EJB 312 that plays a CommandReceiver role in a command pattern as defined in the book Design Patterns, Elements of Reusable Object Oriented Software, Erich Gamma, Richard Helm, Ralph Johnson, and John Vlissides, Addison-Wesley, 1995. The query processor 322 is the command target for the query commands 314 and is responsible for their execution. The query processor 322 communicates with the query registry 324 to obtain a trusted query for each query command 314. Thus, the query command 314 typically does not directly contain the SQL query. However, LOQS 320 provides the flexibility for a query command 314 to act as the query registry 324. Thus, the query command 314 may comprise the target SQL statement, generate it at run time, or retrieve it from a predefined location stored in the query command 314. The query processor 322 delegates all aspects of working with the data source to the data source adaptor.

(*Ivanov* at 3:[0037])

Passage C does not appear to disclose, teach, or suggest any dynamic selection of at least a portion of a plurality of agent components based on the client request and the environment characteristics,” as recited in Claim 1. Furthermore, even assuming for the sake of argument only (and not by way of concession) that the portions of *Ivanov* that the Examiner cites as allegedly disclosing “determining one or more environment characteristics,” as recited in Claim 1 (*i.e.*, Passages A and B), actually disclose those limitations, it is not clear how those cited portions relate to the disclosure in Passage C. In particular, it is not clear how any supposed environment characteristics allegedly determined in either of Passages A or B are used in Passage C such that Passage C could possibly disclose, teach, or suggest “dynamically selecting at least a portion of a plurality of agent components ***based on the client request and the environment characteristics,***” as recited in Claim 1.

As another example, at least because *Ivanov* fails to disclose, teach, or suggest “determining one or more environment characteristics” and “dynamically selecting at least a portion of a plurality of agent components based on the client request and the environment characteristics,” as recited in Claim 1, *Ivanov* necessarily fails to disclose, teach, or suggest “processing the client request using the selected agent components,” as recited in Claim 1.

For at least these reasons, Applicant respectfully request reconsideration and allowance of independent Claim 1 and its dependent claims. For at least certain analogous reasons, Applicant respectfully requests reconsideration and allowance of independent Claims 16 and 31 and their dependent claims.

IV. No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the references cited by the Examiner. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the Examiner's rejections.

Conclusion

Applicant has made an earnest attempt to place this case in condition for allowance. For at least the foregoing reasons, Applicant respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad D. Terrell, Attorney for Applicant, at the Examiner's convenience at (214) 953-6813.

Although no fees are believed due, the Commissioner is hereby authorized to charge any necessary fees or credit any overpayments to Deposit Account No. 05-0765 of Electronic Data Systems Corporation.

Respectfully submitted,

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Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Chad D. Terrell', is written over the printed name and registration number.

Chad D. Terrell
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Date: December 7, 2007

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